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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

15 CR 73 (RMB)

5 EVGENY BURYAKOV,

6 Defendant.

7 -----x

8  
9 September 30, 2015  
11:24 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the  
Southern District of New York

17 BY: ADAM FEE

ANNA SKOTKO

Assistant United States Attorneys

18 WHITE & CASE

19 Attorneys for Defendant

20 BY: SCOTT HERSHMAN

DANIEL LEVIN

KELLY NEWMAN

21 RUSSIAN INTERPRETER: Yana Agoureev

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(In open court)

THE COURT: So we have our standby interpreter, and we're using that standby process again, is that correct?

MR. HERSHMAN: That's correct.

THE COURT: Okay. I have us down for a status conference. I'm happy to hear first from the government, then from Mr. Hershman, or reverse order, if you prefer.

MR. FEE: I'll give the first report, your Honor.

The parties submitted a letter last night, which I know your Honor received.

THE COURT: I not only received it but I endorsed it.

MR. FEE: We saw that this morning. Thank you, your Honor.

Essentially at this point, with plea discussions having concluded today with finality --

THE COURT: You said "with finality"?

MR. FEE: Yes, your Honor. The parties have looked forward towards the December 7th trial date. And in our discussions we have both identified what we view as potentially significant timing issues relating to pretrial litigation and potentially depositions. They were outlined in the letter. I can go into them again, your Honor, but essentially there are CIPA filings, classified filings, to be made by both parties.

The defense has indicated they are not yet ready to set a schedule. And to be fair to them, that's understandable,

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1 because some of the classified discovery was only recently  
2 produced yesterday, and again, a government motion in that  
3 sense as well. The defense has indicated they're not yet ready  
4 to set that schedule and actually need some meaningful  
5 additional period to be able to report on the schedule.

6 The defense has also indicated that they wish to seek  
7 to take depositions abroad of more than one witness. And  
8 again, your Honor, they have not been yet able to report  
9 exactly what they want to do. And they are asking for some  
10 additional time to set a schedule for Rule 15 litigation;  
11 understandably again, your Honor, but, of course, to state the  
12 obvious, the litigation on Rule 15 as compared to CIPA is not  
13 as time consuming. But of course if depositions are permitted  
14 to be taken, there is some additional logistics there.

15 This is all to say, your Honor, that both parties have  
16 discussed this, and I think the shared view is that some  
17 meaningful adjournment of the trial date is likely, in the  
18 interest of the parties and their preference, obviously subject  
19 to the Court's schedule and judgment.

20 What the parties were discussing as a potential area  
21 for new dates, again, not knowing the Court's schedule, was a  
22 late February or early March trial date.

23 THE COURT: 2016?

24 MR. FEE: Correct, your Honor.

25 And just so the Court has the information, a

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1 conservative estimate for the government's case is three to  
2 four weeks. And that is the broadest, without stipulations.  
3 It could certainly narrow some.

4 THE COURT: Well, so if I remember correctly, I set  
5 the trial date back in July. And I did that to accommodate the  
6 defense, for obvious reasons; the defendant is incarcerated and  
7 is entitled to speedy trial. And I was trying to accommodate  
8 the defense at that time. And so that's when we all agreed on  
9 a December trial date.

10 But if you have something else in mind, Mr. Hershman,  
11 let's hear about it.

12 MR. HERSHMAN: Thanks, your Honor.

13 First, let me introduce my partner, Dan Levin, who is  
14 here for the first time.

15 MR. LEVIN: Good morning, your Honor.

16 THE COURT: Nice to see you.

17 MR. HERSHMAN: Mr. Fee is right with respect to the  
18 fact that we have been communicating about these issues and the  
19 trial date of December 7th. We just got handed yesterday a  
20 significant amount of classified material, which obviously is  
21 going to take us a considerable amount of time to sift through.  
22 And we are going to begin that in earnest this morning. That,  
23 I think, makes it somewhat difficult for us to set at least a  
24 schedule as amongst ourselves for when we would want to make  
25 the CIPA motions.

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1 I think we would be ready to make that decision  
2 sometime the week of October -- I think it's the 19th, your  
3 Honor, that week. So maybe we were talking about setting  
4 another status conference for October 22nd. I don't know.  
5 This was independent of looking at the Court's calendar, but we  
6 just arbitrarily chose that date. At which point I think then,  
7 or even before, we would be in a position to have a more firm  
8 discussion with the government about the CIPA schedule, as well  
9 as the Rule 15 situation and any necessary motions there.

10 Of course, assuming we do that, given the length of  
11 time that the CIPA practice will take, it seems impossible for  
12 us to begin the trial on December 7th. So accordingly, we have  
13 discussed with the government changing that, asking the Court  
14 to change that date.

15 THE COURT: So you want a trial in February or March?

16 MR. HERSHMAN: March, I think, would be realistic.

17 THE COURT: 2016?

18 MR. HERSHMAN: Yes.

19 THE COURT: That's okay with Mr. Buryakov?

20 MR. HERSHMAN: Yes.

21 THE COURT: Well, you know, if that's what you want, I  
22 certainly can accommodate -- let's hear about these  
23 depositions, though. Are they in Russia, is that the point?

24 MR. HERSHMAN: At the moment that's the point, your  
25 Honor. We will be in a better position I think to inform both

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1 the government and the Court of the number of depositions, and  
2 also some procedural issues around them, on the 22nd, or  
3 whenever we can have a conference.

4 THE COURT: I see.

5 MR. HERSHMAN: I think that would be a better point  
6 for us to have a more substantive discussion about that. We  
7 are exploring every option and alternative available to us, but  
8 we need some time to do that.

9 THE COURT: Okay. So I would prefer a little bit  
10 earlier for this October conference so we get things moving.  
11 And I would prefer if you can on October 14 -- it's about a  
12 week earlier than you suggested -- at 11:30.

13 MR. HERSHMAN: Sorry, your Honor. I'm not going to be  
14 here that week. I appreciate that you want to do it a little  
15 earlier.

16 THE COURT: Since this is a scheduling thing, could  
17 counsel, you know, fill in for you for that purpose?

18 MR. HERSHMAN: Well, certainly we can send someone  
19 else. The problem would be what information they would have by  
20 that date.

21 THE COURT: I see. So you're out the 14th?

22 MR. HERSHMAN: Just that week.

23 THE COURT: Are you back on the 19th?

24 MR. HERSHMAN: Yes.

25 THE COURT: So let's say October 19th at 11:30. And I

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1 hope that you'll be prepared at that time, both sides, to  
2 resolve all these -- well, they're not that many, but the CIPA  
3 schedule and the deposition schedule, etc., etc., so we can  
4 firm up the trial?

5 MR. FEE: The government's intent and hope is that  
6 we'll have a schedule agreed upon before we walk in the door.  
7 And perhaps we even can report it to the Court in advance and  
8 have a brief conference thereafter, if necessary.

9 THE COURT: So I'm going to move, then, the trial date  
10 to April 4. That's the earliest I can do it, in light of my  
11 trial schedule. I can't do February or March, but I can do  
12 April 4, and give you as much time as you need. And then the  
13 pretrial submissions that we had talked about in anticipation  
14 of the December trial, we had set a November date. So I'm  
15 happy to set March 1st as the date for pretrial submissions.  
16 And we'll leave CIPA and the depositions for the October 19th  
17 conference, if that's okay with all of you.

18 Is there a speedy trial issue or application that  
19 takes us to April 4, 2016?

20 MR. FEE: Your Honor, the government would ask that  
21 the Court exclude time in the interest of justice from the  
22 Speedy Trial Act through April 4, '16, so the defense can  
23 engage in all of the matters we've discussed here, including  
24 CIPA briefing, Rule 15 briefing potentially, as well as to  
25 prepare for trial.

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1           THE COURT: Right. I take it the defense has no  
2 objection to that, since it's primarily their request to go  
3 further?

4           MR. HERSHMAN: Yes, your Honor.

5           THE COURT: Okay. So I'm going to find under 18,  
6 United States Code, Section 3161 that the request for  
7 adjournment of the trial date to and including April 4, 2016,  
8 joined in by both sides is appropriate and warrants exclusion  
9 of the adjourn time from speedy trial calculations. I further  
10 find that the exclusion is designed to prevent any possible  
11 miscarriage of justice, to facilitate these proceedings,  
12 including the steps that need to be taken in anticipation of  
13 going to trial, including more discovery perhaps, and to  
14 guarantee effective representation of and preparation by  
15 counsel for both parties. And thus the need for exclusion and  
16 the ends of justice outweigh the interest of the public and the  
17 defendant in a speedy trial pursuant to 18, U.S.C., Section  
18 3161(h)(7)(A) and (B).

19           And so our conference, then, our next conference is  
20 October 19, 2015, at 11:30. And there will be no need, then,  
21 for our currently scheduled December 1st pretrial conference  
22 and our December 7th trial date. So vacate those two dates.

23           Is that agreeable to everybody?

24           MR. HERSHMAN: Yes.

25           MR. FEE: Yes, your Honor.



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1 THE COURT: Okay. Any other issues that we need to  
2 discuss?

3 MR. FEE: Not from the government, your Honor.

4 MR. HERSHMAN: No, your Honor.

5 THE COURT: Nice to see you all. Thanks very much.

6 (Adjourned)